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EXTENDING "ENGROSSING" AT COMMON LAW TO INSURANCE AS AN "ARTICLE OF PRIME NECESSITY."

In Harris v. Commonwealth, 73 S. E. 561, decided by Virginia Supreme Court of Appeals, there was considered an indictment for an alleged criminal conspiracy among fire insurance companies to fix the rates and control the business of fire insurance in Newport News, Virginia.

It was conceded there is no statute prohibiting any such combination as was charged, but the contention was that there was charged a crime at common law, the claim being that the common law, "is an expansive, elastic, progressive system, and its old principles are as effective to-day to prevent unlawful conspiracies to oppress the people in the exercise of their rights to enjoy the benefits of modern insurance as it is to protect the people to-day in their rights to enjoy wholesome food at reasonable prices."

If the proposition can be stated no more strongly than this quotation shows, it well may be thought that the demurrer upon the ground that no criminal offense was charged rightly was sustained.

The proposition to be of sumcient basis for an indictment must regard fire insurance as one of the "necessaries of life" or of prime necessity, the enjoyment of which by the public illegally is prevented by engrossing.

The things which the law against engrossing embraced were combinations among dealeres in provisions or the "necessaries of life," or "articles of prime necessity," or of "merchandise' or "manufacture in the market," these classes being found in the discussion by the Chief Justice in the opinion in Standard Oil Co. v. United States, 221 U. S. 1, 34 L. R. A. (N. S.) 834, and the authorities it cites.

The Virginia court says: "Insurance is not an article of merchandise or manufacture, or one of the 'necessaries of life' or of prime necessity within the letter and spirit of the laws against engrossing," and Paul v. Virginia, 8 Wall 168, is referred to to show that insurance contracts are not articles of commerce in any proper meaning of the word.

It seems to us that this cited case ought to cut no figure in such a question as was before the court. It might be that a thing might not be an article of commerce under our constitutional clause merely because it is a contract, while the indemnity insurance contracts afford might be practically indispensable in the business world for the carrying on of trade.

If this be so, then "necessaries of life" or "articles of prime necessity" must be limited to man's individual needs in the pursuit of life and not in his pursuit of the means whereby he may live for it to escape.

But this idea is negatived by the law against engrossing applying to "merchandise" or "manufacture in the market," taking it that these terms may embrace other things than "necessaries of life" or "articles of prime necessity."

It may scarcely be doubted that things may in one civilization be deemed "necessaries of life" or "articles of prime necessity," which another civilization might relegate to an inferior place, and conversely, that things unregarded might come into use as such necessaries or articles. For example, electricity as an agency for light and heat and water as furnished by a water company for domestic use may well be deemed such necessaries or articles, though they were unknown to the common law.

Going into business affairs, the telephone could be well deemed an article of prime necessity of this civilization and if "it is true that the principles of the common law are elastic and that one of its peculiar merits is that it adapts itself to the rights of parties under changed circumstances," as the Virginia court says, may it not be claimed, that it would be a common law

offense to control telephone rates by combination and conspiracy.

It may well be stated, however, that the telephone is not of such universal demand in the conduct of business as is insurance. Commercial credit even would be withheld from merchants who would omit to carry insurance upon their business, and thus there cannot be the exercise of volition in its being carried or not. There might not be specific inquiry of a merchant in this regard, but this would be upon the presumption that one in business is not so foolhardy as to omit to carry reasonable insurance, or that he would not encounter a refusal of credit by such an omission. Indemnity of this kind is a commodity, though technically or in the sense of the commerce clause, it is merely a contract, but a contract "of prime necessity" and therefore "an article of prime necessity."

In this wise insurance companies might be supposed to argue in justification of their existence and with greatly more of elaboration and eloquence would their zeal and experience enforce the truth of their contention, but, when their business is claimed to be *juris publici,* they take another tack.

Pressed in a corner of public accountability they argue that one does not have to take out fire insurance if he does not wish, and his freedom to leave it or take it is in the sacred domain of contract. No more, however, is the merchant free to continue in business and not buy insurance than an individual is free to go hungry and not buy bread. In the one case, his business will starve, and in the other, his body will starve.

It may be true, and is, that criminal offenses should not be raised by construction, and in this civilization old common law crimes should meet a challenge in our so different an age, but if they are to be recognized at all the spirit that informs them should also be recognized.

The particular kind of thing that the law against engrossing was aimed at was injury to the public in and concerning what was a widespread, general necessity. That insurance may not be so characterized it would seem absurd to assert. It were more plausible to argue that the common law applied merely to physical, tangible things and thus allow insurance companies to escape upon a technicality.

NOTES OF IMPORTANT DECISIONS

TREATIES—EXCLUSIVE RIGHT OF ADMINISTRATION OF ESTATES BY CONSULS UNDER HIGHLY FAVORED NATION CLAUSES.—In the case of Rocca v. Thompson, 32 Sup. Ct. 207, the supreme court settles a question of construction of a clause in a treaty with Argentine, made in 1853, which concerned administration of estates of foreigners dying in this country.

This clause reads as follows: "If any citizen of either of the two contracting parties shall die without will or testament, in any of the territories of the other, the consul general or consul of the nation to which the deceased belonged, or the representative of such consul general, in his absence, shall have the right to intervene in the possession, administration and judicial liquidation of the estate of the deceased conformably with the laws of the country, for the benefit of the creditors and legal heirs."

The question passed upon was whether this clause in the Argentine treaty, supposed to be carried into subsequent treaties containing highly favored nation clauses, gave to consuls of countries with which such treaties exist, preferential right to administer the estates of their citizens dying in the United States.

The opinion shows that this question has been decided both ways, by supreme courts in New York, affirmatively in Massachusetts and Alabama, and negatively by the Supreme Court of Louisiana, and now the United States Supreme Court affirms the negative view taken by California courts.

In reaching this conclusion, the court takes judicial cognizance of the fact that "treaties are the subject of careful consideration before they are entered into, and are drawn by persons competent to express their meaning and to choose apt words in which to embody the purposes of the high contracting parties," and reasons that, if any such result as committing administrations as contended for had been intended, it was easy to so declare.

Instead of this being done, the court shows that the meaning of the word "intervene" is far different from this, especially in its im-

plication that competent legal action already must have been had or begun as to such estates. But the court very rightly does not confine its opinion to demonstrating that the language used does not accomplish the result claimed by the Italian Consul in this case. The opinion says: "Emphasis is laid upon the right under the Argentine treaty to intervene in possession, as well as administration and judicial liquidation; but this term can only have reference to the universally recognized right of a consul to temporarily possess the estate of citizens of his nation for the purpose of protecting and conserving the rights of those interested before it comes under the jurisdiction of the laws of the country for its administration. The right to intervene in administration and judicial liquidation is for the same general purpose and presupposes an administration or judicial liquidation instituted otherwise than by the consul who is authorized to intervene."

One reading the opinion may agree with the writer that he reached the correct conclusion, but when he finds out that this clause is merely inserted out of an abundance of caution and not to declare some new right, he may be moved to think that the ability of treaty-makers to express themselves clearly may not be greatly superior to that of others.

It is also to be noted that the opinion speaks cautiously as follows: "There is, of course, no federal law of probate or of the administration of estates, and, assuming for this purpose that it is within the power of the national government to provide by treaty for the administration of property of foreigners dying within the jurisdiction of the states and to commit such administration to consular officers of the nation to which the deceased owed allegiance, we will proceed," etc.

Our institutions seem framed to perpetuate what has been called "the glorious uncertainty of law." Here we find a treaty clause nearly sixty years old just settled, and in its settlement, there is suggestion of a far more important question which should have been settled about a century ago. For discussion of this same case, when decided by California Supreme Court, see 70 Cent. L. J. 436.

CORPORATIONS—STOCKHOLDER LIABILITY ANNEXED TO A CORPORATION'S CARRYING ON BUSINESS IN ANOTHER STATE.—In the case of Thomas v. Matthiessen, 192 Fed. 495, the Circuit Court of Appeals for Second Circuit considered the question of a state statute affixing vel non shareholder liability for corporate contracts of a foreign corporation admitted to do business within the state upon no more favorable conditions than are prescribed by law for domestic corporations.

The opinion thus states the matter: "The theory upon which it is sought to recover of the defendant is, that he must be presumed to have assented to be bound by the laws of California in respect to any business done by the corporation there, and so to have subjected himself to the additional liability. If such an assent may be assumed, then the plaintiff is entitled to recover of the defendant in any court which has jurisdiction of his person, notwithstanding that he is a resident and citizen of the State of New York, and that the charter of Arizona does not impose such liability upon him."

It should be said that the corporation whose stockholder was sought to be made liable was an Arizona corporation, upon a contract as to business done in California, whose constitution makes stockholders of its own corporations liable for their debts and that foreign corporations shall not be allowed to do business in the state on more favorable conditions than they.

Reliance was placed by the plaintiff on Pinney v. Nelson, 183 U. S. 144, which much resembled the case at bar, but was distinguished as hereinafter shown.

Justice Brewer said, in the Pinney case: "All that we here hold is that when a corporation is formed in one state, and by the express terms of its charter it is created for doing business in another state and business is done in that state, it must be assumed the charter contract was made with reference to its laws; and the liabilities which those laws impose will attend the transaction of such business."

The distinction drawn is as follows: "If a corporation whose stockholders were not personally liable and whose charter said nothing about doing business in California, did do business there, could it be said that the stockholders had assented to be bound by the law of California imposing an additional personal liability? It could hardly be contended that, in the language of Mr. Justice Brewer, 'they were contracting with reference to the laws of that state?'"

Then the court cites the case of Risdon v. Furness, L. R. (1906), 1 K. B. 59, which case referred to Pinney v. Nelson and said, though the inference might have been properly drawn there it could not be in that case.

Also it appears that in the Arizona charter there was an express provision against stockholder liability and the court says this should be regarded.

This point it seems to us is not forcible, be-

cause such is the meaning of a charter where the statute does not affix personal liability to the ownership of shares.

The point in Justice Brewer's opinion that is particularly relevant is, that there is an authorization by shareholders which creates an estoppel. But ratification is esteemed as binding as previous authority. Considering then that merely going into California does not bind, even presumptively, shareholders, may they not be bound by accepting the benefits which arise out of business done there? Once the doctrine of agency attaches to the acts of the corporation—and from what Justice Brewer says, we see it may attach—all the consequences of that relation ensue.

The further thought is suggested, that, if a corporation cannot really shoulder such a condition as the California constitution prescribes, why might not objection be made that it has not complied with the law entitling it to carry on business?

DEODANDS.

A very interesting subject in the study of the law is that of *Deodands*. Whether it has an application to the practice in this state, may be a doubtful question. I have failed to find any adjudicated case by our courts, nor do I find a repeal of the law by the legislature of this state.

The law pertaining to *deodands* is traced back through centuries of English jurisprudence. According to several authors, it finds its origin in the laws of Moses. Eminent English commentators treat of the subject; but in the law literature of to-day, it finds no recognition. In fact the profession of the law seems to have lost sight of it.

During the past several months, as a matter of curiosity, I have mentioned the matter to various lawyers and judges; but have only found two, Judge Gibbons and Prof. Greeley, who gave a clear outline of the subject.

The definition of the word *deodands* is: A gift to God.

Under the English law, a *deodand* was the article which caused the death of a human being. Upon inquest held in the case of a violent death, the coroner upon the verdict of a jury, or a judge of a court, could confiscate the instrument of death to the king; from the king the article was given to the king's almoner for charitable uses.

Sir Edward Coke in treating of *deodands*, says that they are the price of blood, and are forfeited to God, "that is to the king, God's lieutenant on earth, to be distributed in works of charity for the appeasing of God's wrath."

Sir Matthew Hale devotes an entire chapter to the subject, and Sir William Blackstone gives a shorter but very able review. Among the illustrations given by the various authors as to the application of the law may be mentioned the following.

If a man be driving a cart and the cart falls and kills the man, the cart and horses are condemned as a *deodand;* and so if a cart runs over a man and kills him, both the cart and the horses are forfeited; but if a man be climoing up on a cart wheel for the purpose of picking plums, the cart not being in motion, and the man falls and dies, only the wheel is forfeited. If a man is killed by falling from a hay-rack, the hay-rack is a *deodand.* If a man be struck by a boat in action in fresh water, the boat, but not the cargo is a *deodand;* but if any part of merchandise in a ship falls upon a man and kills him, that article and not the snip is a *deodand.* If a man falls into the water and by reason of the running of the stream, he is carried under the wheel of a mill and killed, the wheel, but not the mill is a *deodand.*

Deodands were not allowed for sudden deaths occasioned by ships sailing upon salt water, and it is claimed that a *deodand* should not be allowed for the death of a person under fourteen years of age. The reason given for the latter exception is the ancient practice in England of giving *deodands* to the clergy, that masses might be said for the soul of the deceased. As a person under fourteen years of age was presumed incapable of sin, a *deodand* was not necessary.

Sir Michael Foster, one of the ablest English writers on criminal law, declared that *deodands* found their origin in the superstition of ages of extreme ignorance, and at the time he wrote, did not receive great countenance in Wesminster Hall. So great was his contempt for the practice that he said: "I have neither leisure nor inclination to enter deeply into the search of antiquity touching these matters. The few things I have thrown out, I offer as probably conjectures,—hints which possible may afford some little light to those who have more leisure and better health for such inquiries."

However, *deodands* continued to be recognized in England until an act of the British Parliment was passed, August 18th, 1846, de-

claring that they should cease from and after September 1st, 1846.

By an express statute of this state, we accept the laws of England which were in force at the time of the settlement of Jamestown; unless such laws are contrary to our constitution or repealed by our statutes, which raises a serious question as to whether the law regarding *deodands* is a part of the unrepealed common law of this state. Upon this phase of the subject I express no opinion.

If we have inherited this old and forgotten law, and the same is still a part of the law of this state, then the coroner, under his common law powers, could direct his jurors to find by their verdicts, what weapons, locomotives, street cars, automobiles or other instruments caused the death in question. In such cases, the circumstances of the killing would be immaterial. A locomotive striking and killing a track walker, would be confiscated, regardless of its value; for the forfeiture allowed in case of *deodands* is not simply for a criminal act, but for the killing of a human being by a moving object.

However, the corporations need take no alarm at the situation, for it is probable that the courts would find some reason to show that the law of *deodands* is contrary to our constitution.

This subject is another illustration of the absurdity of permitting all of the obsolete and nonsensical laws brought across the ocean by the settler of Jamestown to remain a part of the common law of this state.

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BOYCOTTS.

Origin of Word Boycott.—The word "boycott" came into use at first in connection with and as a result of, the treatment which the tenants of Captain Boycott extended to him while he was acting as agent for Lord Earne.[1]

In this connection it is said as to the meaning of the word boycott, in a decision in Connecticut: "We may gather some idea of its real meaning, however, by a reference to the circumstances in which the word originated. These circumstances are thus narrated by Mr. Justin McCarthy, an Irish gentleman of learning and ability, who will be recognized as good authority. In his work entitled, 'England Under Gladstone,' he says: 'The strike was supported by a form of action, or rather inaction; which soon became historical. Captain Boycott was an Englishman, an agent of Lord Earne, and a farmer of Lough Mark, in the wild and beautiful district of Connemara. In his capacity as agent he had served notices upon Lord Earne's tenants, and the tenantry suddenly retaliated in a most unexpected way by, in the language of schools and society, sending Captain Boycott to Coventry, in a very thorough manner. The population of the region for miles round resolved not to have anything to do with him, and as far as they could prevent it, not to allow anyone else to have anything to do with him. His life appeared to be in danger—he had to claim police protection. His servants fled from him as servants flee from their masters in some plague-stricken Italian city. The awful sentence of excommunication could hardly have rendered him more helplessly alone for a time. No one would work for him—no one would supply him with food. He and his wife had to work in their own fields themselves, in most unpleasant imitation of Theocritan shepherds and shepherdesses, and play out their grim eclogue in their deserted fields, with the shadows of the armed constabulary ever at their heels. The Orangemen of the north heard of Captain Boycott and his sufferings, and the way in which he was holding his ground, and they organized assistance and sent him down armed laborers from Ulster. To prevent civil war, the authorities had to send a force of soldiers and police to Lough Mark, and Captain Boycott's harvests were brought in and his potatoes dug by the armed Ulster laborers, guarded always by the little army."[2]

Judge Carpenter, in delivering the opin-

(1) Davis v. Stanett, 97 Me. 568, 55 Atl. 516.

(2) State v. Glidden, 55 Conn. 46, 76, 8 Atl. 890, 3 Am. St. Rep. 23; See, also, Crump v. Commonwealth, 84 Va. 927, 939, 6 S. E. 620, 10 Am. St. Rep. 895.

ion of the court in the case above referred to, then proceeded to say that if this were a correct picture, boycott originally signified violence, if not murder, but that, as an importation from a foreign country, it might be presumed that the word was intended to be used in a milder sense that is in a sense adapted to the laws, institutions and temper of our people. And it is said in a case in a federal court, that the word "boycott" has acquired a significance in our vocabulary and, in the literature of the law and has become a word carrying with it a threat and a menace.[3]

"Boycott" Defined.—In an opinion written by President Taft, while a judge of the United States Circuit Court, a boycott is defined as a combination of many to cause a loss to one person by coercing others, against their will, to withdraw from him their beneficial business intercourse, through threats that unless others do so, the many will cause similar loss to them.[4]

This definition is somewhat enlarged upon in one of the leading cases upon this subject, decided in Minnesota, in which a boycott is defined as a combination of several persons to cause a loss to a third person by causing others against their will, to withdraw from him their beneficial business intercourse through threats that, unless a compliance with their demands be made, the persons forming the combination will cause loss or injury to him; or an organization formed to exclude a person from business relations with others by persuasion, intimidation and other acts, which tend to violence, and thereby cause him, through fear of resulting injury, to submit to dictation in the management of his affairs.[5]

(3) Oxley Stave Co. v. Coopers' International Union, 72 Fed. 695.

(4) Toledo A. A. & N. M. Ry. Co. v. Pennsylvania Co., 54 Fed. 730, 738, 19 L. R. A. 387, quoted in Beck v. Railway Teamsters' Protective Union, 118 Mich. 497, 525, 77 N. W. 13, 74 Am. St. Rep. 421, 42 L. R. A. 407; Matthews v. Shankland, 25 Misc. R. (N. Y.) 604, 611, 56 N. Y. Supp. 123.

(5) Gray v. Building Trades Council, 91 Minn. 171, 97 N. W. 663, 63 L. R. A. 75, 103 Am. St. Rep. 477; Per Brown, J.

In a case in New York, the court approved of the following brief definition of a boycott as meaning to refuse to sell or do business with a concern, and to prevent anybody else from doing business with a concern on any conditions.[6]

Substantially similar definitions have also been given by the courts in numerous other cases.[7]

Legality of "Boycott."—It is said in a case in New York that the verb "to boycott," does not, necessarily, signify that the doers employ violence, intimidation or other unlawful, coercive means, but that it may be used in the sense that persons may combine in refusing to have business dealings with another until certain conditions are improved or certain concessions granted.[8] And in this and some other states it has been decided that employees may so combine and by legitimate means use persuasion to induce others to refuse to have business relations with the employer.[9] In other courts, however, while the right of employees to cease working for an employer and to combine for certain lawful purposes is recognized, their right to ruin their employer's business is not conceded, and it is declared that boycotts are regarded as unlawful even though unaccompanied by violence or intimidation,[10] and that while employees have the right to better their conditions, they canot do it in a way which is

(6) Park & Sons Co. v. National Wholesale Druggists' Ass'n., 175 N. Y. 1, 67 N. E. 136, 62 L. R. A. 632, 96 Am. St. R. 578.

(7) Casey v. Cincinnati Typographical Union, 45 Fed. 135, 143, 12 L. R. A. 193; Walsh v. Association of Master Plumbers', 97 Mo. App. 280, 292, 71 S. W. 455; Barr v. Essex Trades Council, 53 N. J. Eq. 101, 121, 30 Atl. 881; Matthews v. Shankland, 25 Misc. R. (N. Y.) 604, 610, 56 N. Y. Supp. 123; Crump v. Commonwealth, 84 Va. 937, 940, 6 S. E. 620, 10 Am. St. Rep. 895.

(8) Mills v. United States Printing Co., 99 App. Div. (N. Y.) 605, 91 N. Y. Supp. 185.

(9) Butterick Publishing Co. v. Typographical Union, No. 6, 50 Misc. R. (N. Y.) 7, 100 N. Y. Supp. 295; Pierce v. Stablemens' Union, 156 Cal. 70, 103 Pac. 324; Lindsay v. Montana Federation of Labor, 37 Mont. 264, 96 Pac. 127.

(10) Thomas v. Cincinnati N. O. & T. P. Ry. Co., 62 Fed. 803; American Federation of Labor v. Buck's Stove & Range Co., 33 App. D. C. 83.

oppressive of the business of others.[11] And the general rule as supported by the weight of authority is that a "boycott' as defined by Judge Taft, is illegal without regard to whether violence, force or threats are used.[12]

Granting of Injunction.—The United States Supreme Court says in a very recent decision: "Courts differ as to what constitutes a boycott that may be enjoined. All hold that there must be a conspiracy causing irreparable damage to the business or property of the complainant. Some hold that a boycott against the complainant, by a combination of persons not immediately connected with him in business can be restrained. Others hold that the secondary boycott can be enjoined, where the conspiracy extends not only to injuring the complainant, but secondarily coerces or attempts to coerce his customers to refrain from dealing with him by threats that unless they do, they themselves will be boycotted. Others hold that no boycott can be enjoined unless there are acts of physical violence, or intimidation caused by threats of physical violence."[13]

So in a recent case in California it is decided that in this state the injunction against a boycott will issue depending upon the circumstances whether the means employed or threatened to be employed are legal or illegal.[14]

The doctrine, however, may be stated as settled that injunction will lie to restrain a combination of persons from attempting to ruin another's business by bringing to bear intimidating and coercive means upon others having business relations with him.[15] And where the direct and primary object of a boycott is to destroy the business of another, it is no defense to a suit for an injunction that the boycott is merely designed as a means to an end and that that end is in itself a lawful one, namely, the betterment of the condition of those directing the boycott[16] and the facts that no actual violence is shown or that some of the acts in connection with the carrying on of the boycott might properly be made the subject of an indictment is no reason why an injunction should not issue.[17]

One of the frequent causes for a strike and a subsequent boycott is the refusal of an employer to unionize his business. In such a case, while employees have the undoubted right to cease working, that is, to declare a strike, yet it is said that the court recognizes the right of the employer to conduct his business in such manner as he sees fit, provided that manner of conducting it is lawful. And where it is lawful, the court will protect him in that right and will enjoin striking employees from maintaining a boycott for the purpose of compelling him to unionize such business.[18]

Use of Circulars, Handbills, etc.—In New York it has been decided that employees are within their legal rights in combining to refuse to have business relations with another and in publishing circulars

(11) Seattle Brewing & Malting Co. v. Hansen, 144 Fed. 1011.

(12) Loewe v. California State Federation of Labor, 139 Fed. 71; Oxley Stave Co. v. Coopers' International Union, 72 Fed. 695; Casey v. Cincinnati Typographical Union, 45 Fed. 135, 12 L. R. A. 193; Wilson v. Hey, 232 Ill. 389, 83 N. E. 928, affirming 128 Ill. App. 227; My Maryland Lodge v. Adt, 100 Md. 238, 59 Atl. 721, 68 L. R. A. 752; Gray v. Building Trades Council, 91 Minn. 171, 97 N. W. 663, 63 L. R. A. 753, 103 Am. St. Rep. 477; Martin v. McFall, 65 N. J. Eq. 91, 55 Atl. 465; Albro J. Newton Co. v. Erickson, 126 N. Y. Supp. 949; Purvis v. United Brotherhood, 214 Pa. St. 348, 63 Atl. 585, 112 Am. St. Rep. 757; Jensen v. Cook & Waiters' Union, 39 Wash. 531, 81 Pac. 1069, 4 L. R. A. (N. S.) 302.

(13) Gompers v. Buck's Stove & R. Co., (U. S. S. C., 1911) 31 Sup. Ct. 492, 496; Per Mr. Justice Lamar.

(14) Pierce v. Stablemen's Union, 156 Cal. 70, 103 Pac. 324.

(15) Oxley Stave Co. v. Coopers' International Union, 72 Fed. 695; Beck v. Railway Teamsters' Protective Union, 118 Mich. 497, 77 N. W. 13, 42 L. R. A. 407, 74 Am. St. Rep. 421; Gray v. Building Trades Council, 91 Minn. 171, 97 N. W. 663, 63 L. R. A. 75, 103 Am. St. Rep. 477; Walsh v. Association of Master Plumbers', 97 Mo. App. 280, 71 S. W. 455.

(16) Loewe v. California State Federation of Labor, 139 Fed. 71; American Federation of Labor v. Buck's Stove & Range Co., 33 App. D. C. 83.

(17) Matthews v. Shankland, 25 Misc. R. (N. Y.) 604, 56 N. Y. Supp. 123.

(18) Purvis v. United Brotherhood, 214 Pa. St. 348, 63 Atl. 585, 112 Am. St. Rep. 757.

setting forth the circumstances of the strike and requesting their friends to withhold their patronage from such persons.[19] And in California it is decided that employees have the right by all legitimate means—of fair publication and fair oral or written persuasion—to induce others interested in, or sympathetic with, their cause, to withdraw their social intercourse and business patronage from the employer and that they may go even further than this and request of another that he withdraw his patronage from the employer and may use the moral intimidation and coercion of threatening a like boycott against him if he refuse so to do. The legality of this latter proposition, which is spoken of as a "secondary boycott," the court, however, admits, is vigorously denied by the English courts, the federal courts and by the courts of many of the states.[20] And likewise in Montana a similar doctrine is stated.[21]

But in a very recent decision by the United States Supreme Court, it is declared that "the strong current of authority is that the publication and use of letters, circulars, and printed matter may constitute a means whereby a boycott is unlawfully continued and their use for such purpose may amount to a violation of the order of injunction."[22] And the general rule seems to be that the issuance of circulars, printed notices, handbills and other printed matter where used as the means for the unlawful furtherance of a boycott may be enjoined.[23]

So where it appeared that there was a combination to boycott a newspaper in order to compel it to unionize its office and that in furtherance of such object, handbills were printed and pasted in conspicuous places and that circulars were issued and addressed to advertising patrons of such newspaper, requesting them to withdraw their patronage and threatening them, in case of refusal, with the ill will and enmity of organized labor and a withdrawal of patronage of members of labor organizations, it was decided that such acts would be enjoined.[24]

So the picketing of the premises of a person boycotted, for the purpose of intercepting his customers and employees and the distribution of boycott circulars containing statements wholly false as to his relations with his employees, pursuant to an avowed intention of ruining his business, though carried out without violence are, in themselves, acts of coercion which may be enjoined[25] and in such a case it is decided that the duty of equity to enjoin the distribution of boycott circulars under such circumstances is not modified by the fact that under ordinary circumstances it cannot under the constitution of the state enjoin the publication of a libel where the destruction of property rights by coercive means is not involved.[26]

"Unfair" and "We Don't Patronize" Lists and Circulars.—The giving of notices which excite the fear or reasonable apprehension of other persons that their business will be injured unless they break up business relations with, or cease patronizing,

(19) Butterick Publishing Co. v. Typographical Union, No. 6, 50 Misc. R. (N. Y.) 7, 100 N. Y. Supp. 295; citing Sinsheimer v. United Garment Workers, 77 Hun. (N. Y.) 215, 28 N. Y. Supp. 321; Cohen v. United Garment Workers, 35 Misc. R. (N. Y.) 248, 72 N. Y. Supp. 341; Foster v. Retail Clerks' Protective Ass'n., 39 Misc. R. (N. Y.) 48, 78 N. Y. Supp. 860.

(20) Pierce v. Stablemen's Union, 156 Cal. 70, 103 Pac. 324.

(21) Lindsay v. Montana Federation of Labor, 37 Mont. 264, 96 Pac. 127.

(22) Gompers v. Buck's Stove & R. Co., (U. S. S. C. 1911) 31 Sup. Ct. Rep. 492, 496.

(23) Shine v. Fox Bros. Mfg. Co., 156 Fed. 357; Seattle Brewing & Malting Co. v. Hansen, 144 Fed. 1011; Loewe v. California State Federation of Labor, 139 Fed. 71; Casey v. Cincinnati Typograyphical Union, 45 Fed. 135, 12 L. R. A. 193; Beck v. Railway Teamsters' Protective Union, 118 Mich. 497, 77 N. W. 13, 42 L. R. A. 407, 74 Am. St. Rep. 421.

(24) Casey v. Cincinnati Typographical Union, 45 Fed. 135, 12 L. R. A. 193; see, also, Barr v. Essex Trades Council, 53 N. J. Eq. 101, 30 Atl. 881; Matthews v. Shankland, 25 Misc. R. (N. Y.) 604, 56 N. Y. Supp. 123.

(25) Beck v. Railway Teamsters' Protective Union, 118 Mich. 497, 77 N. W. 13, 42 L. R. A. 407, 74 Am. St. Rep. 421.

(26) Beck v. Railway Teamsters' Protective Union, 118 Mich. 497, 77 N. W. 13, 42 L. R. A. 407, 74 Am. St. Rep. 421; see Casey v. Cincinnati Typographical Union, 45 Fed. 135, 12 L. R. A. 193; Ewack v. Kane, 34 Fed. 47.

another are wrong and unlawful, and may be enjoined. Of such a character is a notice stating that a person has been placed on the "unfair list."[27]

And in this connection it may be stated that the words "unfair list" are in most cases, if not all, a euphemism for a boycott and that the use of the former term does not change the nature of the unlawful thing.[28]

So in a case where it was sought by certain brewers to restrain the defendants from designating their beer as "unfair," the court declared that the word "unfair," has a very distinct meaning in these days and that the very use of that term has a distinct meaning to members of labor organizations and that in the case at bar it was in the nature of a direction to them not to drink that beer and gave them to understand that such beer would be boycotted.[29]

So a labor organization may be enjoined from sending out circulars stating that retailers who handle the goods of a certain manufacturer will be placed on the "unfair" list.[30]

Where a complainant who was a manufacturer of brewer's supplies and machinery, refused to pay an increase of wages demanded by his employees and they declared a strike, placed pickets near his premises to follow his wagons to learn for whom he was doing work, notified brewers that they would be boycotted if they continued to deal with him and issued circulars requesting that the public should not drink the beer of certain brewers because they were declared "unfair" in that they had obtained machinery from the complainant, it was decided that an injunction should be issued against the defendants restraining such acts by them.[31]

It has also been held proper to issue an injunction restraining the printing of the name of a certain firm, its business or product in the "We Don't Patronize" or "Unfair" list in the official organ of a labor organization in furtherance of any boycott against complainant's business or product.[32]

HOWARD C. JOYCE.

New York City.

(27) Wilson v. Hey, 232 Ill. 389, 83 N. E. 928, affirming 128 Ill. App. 227.

(28) Wilson v. Hey, 232 Ill. 389, 83 N. E. 928, affirming 128 Ill. App. 227.

(29) Seattle Brewing & Malting Co. v. Hansen, 144 Fed. 1011.

(30) Loewe v. California State Federation of Labor, 139 Fed. 71; but, see, Lindsay v. Montana Federation of Labor, 37 Mont. 264, 96 Pac. 127.

REFORM OF CIVIL PROCEDURE—A WORLD MOVEMENT.

In a former number of C. L. J., we called attention to the universal unrest and movement for an improvement of the ways and means whereby civil disputes are now settled, and especially to the German complaint of the "Weltfremdheit" of the judges, as well as to some rather ridiculous consequences of the movement.

This complaint of "Weltfremdheit" is but one side, however, of the movement. Particularly in Germany, there is another movement on foot, viz.: the so-called "Freirechtsbewegung" (literally "free-law-movement") whereby is meant a movement towards greater freedom for the courts in reaching their decisions.

According to the "Freirechtslehre," no law and no statute is complete. In almost every actual case it becomes necessary to file one or more gaps in the law. Under the present system these are filled by the means of Interpretations, Definitions, Constructions and Analogies. This is wrong, according to the new school. The gaps must be filled by "freie Rechts findung," whereby is meant, not by the help of the words of the law in question, but by a weighing of the respective interests on a sociologic or social—teleologic basis (whatever that may mean). The great majority of the

(31) My Maryland Lodge v. Adt, 100 Md. 238, 59 Atl. 721, 68 L. R. A. 752.

(32) American Federation of Labor v. Buck's Stove & Range Co., 33 App. D. C. 83.

school agree that the express commands of the law are binding on the courts, but some few have reached the point, where they concede to the judge the right to disregard the positive law, when the result of his "freie Rechtsfindung" demands it. So we seem to be back to the lex naturae school of lawyers and philosophers.

What the school means by its "freie Rechtsfindung" is rather difficult to lay hands on, but those of its members who are most concrete, seem to agree that, when a gap in the law has to be filled, the judge—taking into consideration the various individual, family, social, economic and political interests involved—must put himself in the lawyer's place and decide the case in the same manner, as he would have done if as legislator he had to prescribe for future cases of the same character. This seems to bring us back to the old Germanic Assemblies or "Thing," one of the main characteristics of which was that they combined the legislative and judicial powers, and exercised them simultaneously.

Complaint is being made that legislative bodies are becoming too large and not easy to handle; that it is very difficult for them to come to any conclusion, without first establishing a sort of tyranny in the hands of the presiding officer or in some sort of steering committee. Still they can act as a unit only. Now, it is stated that in Germany there are more than 10,000 judges, and we suppose there are as many at least in the United States. Would it not be lovely, if each of these could set himself up as a legislator according to his own political and social ideas, and apply the "Rule of Reason?" We complain now of the judge-made law, but if the "freie Rechtsfindung" was accepted "the latter state of this man certainly would be worse than the first." Still this principle has recently been elevated into law by section 1, of the new Swiss Code of Civil Law, which took effect on the first day of this year, and which declares that when all other sources fail, the judge shall decide according to the rule he himself would enact, if he as legislator had to prescribe for the case.

However, it is rather easy, in considering any new movement of thought to lay hands on its comical phases and hold them up as mirth provoking curiosities. This movement is not all foolishness. The fact cannot be denied that there is a great unrest all over the world concerning matters of law, and especially of remedial law. There must be some good and genuine reason for this.

The civil law of the Romans, as we now know it, rests mainly on the response of the jurists of the second century A. D. At that time, or shortly before, did the classic civilization reach its climax. But the development, of which the classic culture was the issue, commenced when Rome, at the time of the Punic Wars, ceased to be a provincial power and expanded as a world power. The finished product of Roman law which has come down to us, is the outcome of a long struggle of adjustment to new facts and conditions.

The height of civilization attained by the Romans around the year 100 A. D. was never reached by Rome's successors until within recent years. Roman law, as one of its foundations, rested upon the institution of slavery, and it was not until the Nineteenth Century that the modern world, as a whole, managed to free itself from slavery and serfdom, and even now a sort of industrial serfdom still exists.

The general principles of law as enunciated by the Roman jurisconsults have, therefore, in pure or modified form, been sufficient, until recently, to take care of all legal problems. But now, we have, for the first time, societies and nations entirely composed of free men, and of men promised equality before the law. In addition, the advance in physical science has, of late years, been so enormous, that new facts, new conditions by the hundreds meet us every day. These have to be laid under the accepted general principles, or these adapted to fit the new facts and conditions.

All law refers to persons and to things. Persons have come to stand in a new relation to each other; things have multiplied in kind. Is it any wonder, if the old forms squeak, when they have to fit under these circumstances? Is it any wonder if the persons fitting the forms, and those to whom they are being fitted, become restless and demur?

It will take quite some years before a system of law adequate to the demands of the modern world can be evolved. In the meantime, thanks are due to all who, in good faith, carry stones to the building, even if not all of these can be used in the final erection thereof.

A. T.

BILLS AND NOTES—DEMAND PAPER.

KERBY v. WADE, et al.

Supreme Court of Arkansas. Jan. 1, 1912.

142 S. W. 1121.

Demand paper is overdue if it remains unpaid for an unreasonable time after its date, or the date of delivery.

The appellees brought this suit against Henry Green, W. A. Parker, and J. P. Kerby to set aside a mortgage for alleged fraud, misrepresentation, and deceit practiced upon appellee Wade in its execution. It is alleged, substantially, that Wade applied to one Henry Green and one W. A. Parker, two practicing attorneys, to borrow the sum of $100; that Green and Parker informed Wade that, in order to enable them to obtain the money desired by plaintiff, he would have to execute a realty mortgage to them in the sum of $100; that the plaintiff executed the mortgage on his home place, which is described, and delivered same to Green and Parker, and expected to immediately obtain the sum of money for which he had given security, but that Green and Parker did not furnish same to him, saying that they would get the money for plaintiff, but failed to do so; that plaintiff insisted on getting the money or having his papers returned; that Green and Parker failed to furnish the money or to return his mortgage; that he made frequent demand upon them to surrender the mortgage or satisfy same; that defendants, instead of doing this, assigned the mortgage to appellant Kerby for an alleged consideration of $100; that the assignment was wholly fictitious and fraudulent; that the placing of the mortgage on record by Green and Parker was a fraud upon appellee Wade; that Kerby, the alleged assignee, took the assignment from Green and Parker with full knowledge of the fact that Green and Parker had failed to loan appellee Wade any money, and with full knowledge that the mortgage was without any consideration; that the alleged assignment of Green and Parker to Kerby was without consideration and void; that the same was a fraudulent scheme between Green and Parker to defraud appellee Wade.

Appellee further alleged that he had sold the land to W. D. Lawler, and had executed to him a warranty deed, and was responsible to him on said warranty. That appellee Wade was damaged by reason of the fraudulent acts of Green, Parker, and Kerby in the sum of $200. He prayed judgment for damages in this sum, and that the mortgage be canceled, etc. Appellee made the mortgage an exhibit to his complaint.

Green answered, setting up, substantially, that the mortgage was executed in consideration of services to be performed by him in procuring a loan for appellee Wade; that he never "used the mortgage and note, or attempted to do so, except to borrow the money and serve the plaintiff, and that he would have secured the money on the note and mortgage, had plaintiff not interfered and refused to go on with the matter." He denied all the other material allegations of the complaint.

The appellant J. P. Kerby answered, denying that the assignment of the mortgage was fictitious and fraudulent; denying that he took said assignment with full knowledge that no money of any character whatever had been loaned to Geo. Wade by Green and Parker; and denying the other allegations of the complaint as to the assignment. But he does not set up affirmatively that he was an innocent purchaser for value.

The court, after hearing the evidence, rendered a decree in favor of the appellees, canceling the mortgage, and directing the appellant Kerby to turn over to appellees the mortgage and note. The appellant Kerby prosecutes this appeal.

WOOD, J.: (after stating the facts as above). (1) The mortgage recites, among other things, as follows: "The sale is on the condition that, whereas, I am justly indebted unto the said G. Henry Green and W. A. Parker in the sum of one hundred dollars, evidenced by a note of even date herewith, due after date with interest. Now, if I shall pay said moneys, at the times and in the manner aforesaid, then the above conveyance shall be null and void," etc. The mortgage was dated November 11, 1908. The alleged assignment was January 9, 1909. It will be observed that the mortgage recites that the note which it was executed to secure was "due after date." According to the mortgage, therefore, there was no date fixed for the maturity of the note which it was given to secure. It was not even due on demand; at least, it could not be considered as anything more than demand paper, if that.

It is true appellant Wade, in one part of his deposition, stated that "the mortgage was to come due the 1st of November," in 1909; but other parts of his testimony show that the note was to be paid when the loan was procured for him by Green and Parker, and there was no time fixed when that loan should be procured. It was to be procured for him as soon as possible. Now the mortgage was incident to the debt, and could not have been due after the debt which it was given to se-

cure was due. The mortgage was subject to foreclosure at and after the time when the note became due, whenever that was. Inasmuch as the mortgage did not name any date for the maturity of the debt which it was given to secure, it was so peculiar and out of the ordinary course in this respect as to put appellant upon inquiry, which, if pursued, would have disclosed circumstances to prove that the note was past due.

The mortgage itself and the testimony of appellee Wade, with reference thereto, were sufficient to warrant the court in finding that appellant purchased the mortgage (if he did purchase it) after the debt which it was given to secure was past due; and that therefore appellant was not an innocent purchaser for value. Appellant was notified by the mortgage itself that, at most, he could only be purchasing a security for demand paper.

(2) "It now seems to be definitely settled, at least in this country," says Mr. Tiedeman, "that demand paper is overdue if it remains unpaid for an unreasonable time after its date or the date of delivery." Tiedeman on Bills and Notes, Sec. 108. See, also, Daniel & Douglass, Elements of the Law of Negotiable Instruments, Sec. 240, citing 1 Parsons on Notes and Bills, Secs. 263, 264.

(3) The circumstances under which this note was executed show that it was past due when appellant purchased the mortgage; and he therefore took it subject to any defects that might have been set up by the maker as against the payee.

It could serve no useful purpose to set out and discuss in detail the evidence concerning the fraudulent execution of the mortgage. It sufficeth to say that we have examined it carefully, and are of the opinion that the court was fully warranted in holding the same to be fraudulent and void.

The judgment is affirmed.

NOTE.—*Maturity of Note Payable on Demand with Reference to Bona Fide Purchasers, Statute of Limitations and Notice to Indorsers.*—In the principal case the first of the above situations was considered, and with refrence to that statutes have been passed, these statutes not being deemed to lengthen the statute of limitations, unless they in term so state though they might well be thought to make limitations begin to run, where otherwise the beginning would be postponed. So also they might seem to fix the time within which indorsers should be notified of non-payment.

1. *Starting of Statute of Limitations.*—As to paper becoming due immediately so far as the statute of limitations is concerned, it is said in Turner v. Iron Chief Mining Co., 74 Wis. 355, 43 N. W. 149, 17 Am. St. Rep. 168, 5 L. R. A. 533 that: "The law is well settled that a promissory note payable on demand, whether with or without interest, is due forthwith, and an action theron against the maker is barred by the statute of limitations, if not brought within the time prescribed by statute after its date. Wheeler v. Warner, 47 N. Y. 519. * * * Burnham v. Allen, 1 Gray, 496; * * * Hill v. Henry, 17 Ohio 9; Wilks v. Robinson, 1 Rich L. 182."

In Cousins v. Partridge, 79 Cal. 224, 21 Pac. 745, it was claimed suit was premature where brought on a demand note in less than six months from its date, where the statute provided that the "*apparent* maturity" was six months after date. This was overruled on the theory that: "It has always been the rule that suit may be brought on a note payable on demand at any time without any previous demand—the suit itself being all the demand necessary." The same reasoning would make the statute of limitations begin immediately to run.

In Collins v. Trotter, 81 Mo. 275, it is said the bringing of suit is the making of a demand and one can bring suit forthwith.

In Seward v. Hayden, 150 Mass. 158, 22 N. E. 629, 15 Am. St. Rep. 183, 5 L. R. A. 844, the question was whether the statute began to run on the day of the date of a demand note or the following day. It was ruled it began the following day, because "The tendency of recent decisions is very strongly towards the adoption of a general rule which excludes the day at the *terminus a quo* in such cases."

In 7 Cyc. 848, cases from twenty-five states and from England and Canada put the beginning of the running of the statute upon the right to begin suit at any time without a previous demand.

2. *Maturity as to Indorsers.*—In Merritt v. Jackson, 181 Mass. 69, 62 N. E. 987, the law merchant was said to have been restored in Massachusetts by repeal of law making a demand upon indorsers necssary within 60 days. This law merchant required presentation within a reasonable time, and "each case depended upon its peculiar circumstances." Parker, C. J., in Field v. Nickerson, 13 Mass. 131; Shaw, C. J., in Leaver v. Lincoln, 21 Pick. 267, and Massachusetts cases show eight months was held not a reasonable time to make demand on indorser, and in the Merritt case, sixty days was outside of a reasonable time, because for sixty years a statute, which had been repealed, was in force and the court was not made "aware that in the interval (after its repeal) any usage of trade or business with respect to demand notes had grown up different." This seems to present an instance of a statute being in force after it has been repealed.

In 7 Cyc. 972, it is said: "The general rule in regard to presentment of paper payable on demand or at sight is that in order to charge indorsers or the drawer it must be presented and payment demanded within a reasonable time," and this rule applies "to promissory notes payable on demand," and quite a great number of cases are cited. But what is a reasonable time is difficult to fix.

3. *Maturity So Far as Purchasers are Concerned.*—This question is very similar to that with regard to indorsers. There are three classes of cases on this subject—one, there can be no overdue paper until a demand has been made; one, that it is immediately overdue, but

the majority of courts say, the paper becomes overdue after the lapse of a reasonable time.

For the first proposition there is found English authority only and it is on the theory that it is meant there shall be a continuing security. Brooks v. Mitchell, 11 L. J. Exch. 51, 9 M. & W. 15.

For the second proposition there are found Georgia cases only and they are based on statute, Hotel Lanier Co. v. Johnson, 103 Ga. 604, 30 S. E. 558.

For the third proposition a multitude of cases could be cited and the difficulty is to say what is a reasonable time and what and how potent are the factors for determining this question, decisions saying that circumstances have included within this period transference within one day to two years, while on the other hand an unreasonable time has been deemed to elapse all the way from six years down to six weeks, according to circumstances in different cases.

Ordinarily, however, this is a question of law for the court. Poorman v. Mills, 39 Cal. 545, 2 Am. Rep. 451; Stewart v. Smith, 28 Ill. 397; Carll v. Brown, 2 Mich. 401; Contra Barbour v. Fullerton, 36 Pa. St. 105; Bacon v. Harris, 15 R. I. 599, 10 Atl. 647. Evidently statutes should fix this time.

C.

BOOKS RECEIVED.

Judson on Interstate Commerce, 2nd Edition, The Law of Interstate Commerce and its Federal Regulation. By Frederick N. Judson of the St. Louis Bar. Price, $6.50. Chicago, Illinois. T. H. Flood & Co. Review will follow.

BOOK REVIEW.

CHRIST'S CHRISTIANITY.

Mr. Albert H. Walker, of the New York bar, has taken the "sayings" of the Saviour, as recorded in the four Gospels and arranged them according to subjects.

There is no word of comment or anything else in the text than these sayings, except the footnotes giving "chapter and verse of the Gospel from which quotation is made, the Revised Version of the Nineteenth Century being used, because, according to the author-compiler, "it more accurately represents the Greek of the most ancient and authentic manuscripts of the Gospel and because accuracy of statement, rather than archaic beauty of language is to be preferred in a book devoted to the sayings and speeches of Jesus."

For another reason he omits some verses in the Gospels of Mark and John, and omitting sayings there recorded he states that every statement of permanent importance ascribed to Jesus in the form gospels "is printed in this book in its apparently proper relation to every other statement thus printed."

This little book is very remarkable and is submitted "to the judgment of all those who wish to learn the real meaning of the message of Jesus Christ to mankind." It shows the professional habit to judge words in the completest context that can be produced, and should be of service to scripture readers.

The book is 800 size in cloth and is published by The Equity Press, New York, 1911.

HUMOR OF THE LAW.

John C. Bell, attorney general of Pennsylvania, tells the following story in the Metropolitan Magazine:

A subscriber writes us that, while waiting for the elevator in one of the cheaper office buildings in the city of his residence, he scanned the directory opposite the elevator as a matter of curiosity. Among other names there was one which bore this legend:

"In many of the interior counties of Pennsylvania there are lay judges who assist the law judges in disposing of miscellaneous cases. Several years ago there was introduced into the legislature a bill to abolish the office of lay judge. Judge ——, himself a lay judge, appeared before the senate judiciary committee at Harrisburg, which was considering the matter.

"His argument was this: 'There is before your august body a bill to abolish the office of lay judge. I am in favor of its passage. For ten years I have been a lay judge myself, sitting day by day with a judge learned in the law. But he does all the work and I have no show. In all these years I have only once been asked for a concurrent opinion and that was last week, when, after listening to two lawyers argue an equity case for three days, my colleague turned to me and said, "Judge, don't these gol durned long winded lawyers give you a pain?'"

Edward Douglas White, of Louisiana, Chief Justice of the United States Supreme Court, said at a luncheon given in his honor in Washington, that corporate and political corruption will only be stopped when convictions mean ignominy and disgrace.

"At present," said Judge White, "I am afraid that convictions and fines are regarded too lightly by the big financiers of the sinning type. They remind me of John Booth, of Lafourche.

"John Booth, an old offender, was haled before a magistrate, who said to him sternly:

"'I see by your record, Mr. Booth, that you have had thirty-seven previous convictions. What have you to say?'

"Booth, assuming a sanctimonious air, replied:

"'Well, judge, man is not perfect.'"—Minneapolis Journal.

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

Arkansas.....13, 39, 61, 103
California.....15, 77, 82, 104
Colorado.....107
Georgia.....18, 45, 50, 52, 71, 72, 87, 105, 110
Illinois.....27, 42, 44, 47, 54, 75, 78, 90, 118, 119
Indiana.....20, 22, 43, 64, 65, 88, 95, 117
Kansas.....21
Kentucky.....11, 17, 46, 58, 60, 76, 93, 97, 113
Louisiana.....81, 98, 108
Michigan.....74, 115
Mississippi.....31, 63
Missouri.....16, 25, 26, 29, 30, 41, 48, 49, 68, 86
Montana.....33
New Jersey.....4, 34, 111, 114
New Mexico.....83, 84, 94, 96
New York.....6, 7, 19, 23, 24, 36, 37, 40, 51, 53, 55, 56, 59, 66, 80, 89, 91, 100, 101, 120, 121.
Oklahoma.....5, 8, 10, 14, 57, 73, 79, 102, 106
Oregon.....99
Pennsylvania.....12, 69
South Dakota.....116
Tennessee.....70
Texas.....38
United States C. C......3
U. S. C. C. App......2, 35, 67, 109, 112
Utah.....1
Virginia.....28, 85
Washington.....9, 62, 92
Wyoming.....32

1. **Adverse Possession**—Color of Title.—Color of title is immaterial, as regards adverse possession, except for purpose of determining extent of possession.—Welner v. Stearns, Utah, 120 Pac. 490.

2. **Aliens**—Procedure.—While the record must show a regular procedure in conformity to law to support an order of immigration officers for deportation of an immigrant, technical precision in the record is not required.—United States v. Rodgers, C. C. A., 191 Fed. 970.

3.——Right of Counsel.—An alien immigrant is not entitled to be represented by counsel at a hearing before a special board of inquiry as to his qualifications for admission.—United States ex rel. Falco v. Williams, C. C., 191 Fed. 1001.

4. **Assignment**—Validity.—An assignment of a debt is valid in equity by a delivery of the evidences of debt without any writing—Jenkinson v. New York Finance Co., N. J., 83 Atl. 36.

5. **Attachment**—Joint Liability.—Plaintiff in attachment who wrongfully levied on goods of another is equally liable with the officer, where he directed the levy.—Stump v. Porter, Okla., 120 Pac. 639.

6. **Attorney and Client**—Contingent Fees.—Contingent fees may be based upon a percentage, though entirely disproportionate to what would be a reasonable compensation if not contingent.—Ransom v. Ransom, 133 N. Y. Supp. 173.

7.——Contracts Between.—A contract between attorney and client must be construed most strongly in favor of the client.—Hawke v. Dorf, 133 N. Y. Supp. 23.

8.——Settlement by Client.—Prior to judgment, attorney has no interest under which he can prevent bona fide settlement by client.—Wells Fargo & Co. v. Moore, Okla., 120 Pac. 612.

9. **Bankruptcy**—Corporation.—Under the bankruptcy act, a trustee in bankruptcy of a corporation, suing the president thereof for a wrongful impairment of the capital of the corporation, held not required to show that there were any creditors of the corporation when the wrong complained of was committed.—Union Trust Co. v. Amery, Wash., 120 Pac. 539.

10. **Banks and Banking**—Acceptance of Check.—Checks impose no obligation on the drawers until accepted and are revocable until presented and paid.—First Nat. Bank v. School Dist. No. 4, Bryan County, Okla., 120 Pac. 614.

11.——Depositor.—A bank placing the amount of a check to the credit of a customer held to assume liability for the customer's checks.—J. M. Robinson & Co. v. Bank of Pikeville, Ky., 142 S. W. 1065.

12. **Bills and Notes**—Burden of Proof.—In action on check six years after date, plaintiff need not show that defendant had suffered no loss by delay where he does not allege such loss.—Rosenbaum v. Hazard, Pa., 82 Atl. 62.

13.——Demand Paper.—Demand paper is overdue, if it remains unpaid for an unreasonable time after its date or the date of delivery.—Kerby v. Wade, Ark., 142 S. W. 1121.

14.——Guarantor.—One writing his name across the back of a nonnegotiable note held not liable as guarantor, unless, in addition, he undertakes to become liable, either by written or oral agreement.—Steele v. Hudson, Okla., 120 Pac. 616.

15.——Transfer.—A negotiable instrument may be transferred by delivery, where the intent so to transfer is made apparent.—Johnson v. All Night and Day Bank, Cal., 120 Pac. 432.

16. **Brokers**—Commissions.—A purchaser's financial ability as affecting right to commissions held to be his ability to respond in damages.—Goldsberry v. Eades, Mo., 142 S. W. 1080.

17.——Double Agency.—Where property was placed in the hands of a real estate broker for sale with knowledge that he was the agent of the other party, his right to a commission was not destroyed because he was agent for the two.—Gudgel v. Cook, Ky., 142 S. W. 1014.

18. **Carriers of Goods**—Delivery.—A railroad company, to whom cotton has been delivered by a warehouse company on its track for shipment, held liable to the owner of the cotton on its destruction by fire.—Central of Georgia Ry. Co. v. Bird, Ga., 73 S. E. 599.

19.——Private Carrier.—A private carrier is not, like a common carrier, an insurer of goods intrusted to him, but is required to use care in the discharge of his duty.—O'Rourke v. Bates, 133 N. Y. Supp. 392.

20. **Carriers of Live Stock**—Shipper as Passenger.—Where care of live stock is imposed upon the shipper, there is an agreement to carry the shipper as a passenger.—Pittsburgh, C. C. & St. L. Ry. Co. v. Brown, Ind., 97 N. E. 145.

21. **Carriers of Passengers**—Contributory

Negligence.—In action for injuries to passenger, where defendant pleads general denial, plaintiff held not bound to prove freedom from contributory negligence, but not entitled to recover if her evidence shows that she was negligent.—Altwein v. Metropolitan St. Ry. Co., Kan., 120 Pac. 550.

22.——Degree of Care.—The duty of a carrier of passengers to exercise the highest degree of care for its passengers consistent with the practical operation of its road applies to street railroads.—Louisville & S. I. Traction Co. v. Walker, Ind., 97 N. E. 151.

23.——Liability.—In the absence of a special contract, a carrier, selling a coupon ticket for transportation over its own and connecting lines assumes liability only for personal injuries occurring upon its own lines.—Brook v. Brooklyn Union Elevated R. Co., 133 N. Y. Supp. 253.

24.——Premises.—A carrier held not liable for the safety of a path which approached its station; the path not being the approach provided by the carrier.—Clyde v. Brooklyn Union Elevated R. Co., 133 N. Y. Supp. 1.

25.——Relation of Passenger.—One becomes a street car passenger the instant he starts to board a car, and it then is the duty of the operators of the car not to start it until he has been given a reasonable opportunity to reach a place of comparative safety.—Conway v. Metropolitan St. Ry. Co., Mo., 142 S. W. 1101.

26.——Res Ipsa Loquitur.—A presumption of negligence arose upon showing that a street car passenger was injured by reason of a collision.—Meegan v. Metropolitan St. Ry. Co., Mo., 142 S. W. 1104.

27. **Charities**—Public Library.—A gift for the purpose of aiding in the establishment and support of a public library is a gift to a charity.—Franklin v. Hastings, Ill., 97 N. E. 265.

28. **Conspiracy**—Pleading.—Where the object of a conspiracy is not criminal, and the illegality consists of the means by which the object is effected, the indictment must set forth the means.—Harris v. Commonwealth, Va., 73 S. E. 561.

29. **Contempt**—Corporations.—Even in the absence of statutory powers, corporations may be punished for contempt both by courts of law and equity.—Fielder v. Bambrick Bros. Const. Co., Mo., 142 S. W. 1111.

30. **Contracts**—Duress.—A contract made under duress may be rendered valid by ratification.—Brown v. Worthington, Mo., 142 S. W. 10[illegible].

31.——Statutes.—A state statute has no extra-territorial force, and cannot make unlawful a contract entered into in another state.—Ascher & Baxter v. Edward Moyse & Co., Miss., 57 So. 299.

32. **Corporations**—De Facto Existence.—Failure to comply with mandatory statutory requirements in the organization of a corporation does not prevent the formation of a de facto corporation.—State v. Van, Wyo., 120 Pac. 479.

33. **Counties**—Competitive Bidding.—A statute requiring award of a county contract to the lowest bidder is for the benefit of the public, and confers no right upon the lowest bidder, as such.—State v. Hindson, Mont., 120 Pac. 485.

34. **Courts**—Jurisdiction.—Supreme Court held to have no jurisdiction of an action for personal injuries brought by a nonresident against a foreign railroad corporation.—Klunck v. Pennsylvania R. Co., 133 N. Y. Supp. 207.

35.——Jurisdiction.—State laws may create new rights enforceable in the federal courts relating to subjects within the legislative authority of Congress, where such authority remains dormant by reason of the failure to enact any statute relating to the same subject.—Aurora Shipping Co. v. Boyce, C. C. A., 191 Fed. 960.

36. **Covenants**—Breach.—A covenant against incumbrances is a contract of indemnity, and, if broken at all, is broken as soon as made.—King v. Union Trust Co., 133 N. Y. Supp. 18.

37.——Burden of Proof.—Where land subject to a tax title was sold with a covenant against incumbrances and the covenantee bought in the tax title, held, that he had the burden of proving its regularity to recover upon the covenant.—Dininny v. Brown, 133 N. Y. Supp. 314.

38. **Criminal Evidence**—Self-serving Declaration.—State putting in evidence in a homicide case defendant's self-serving declaration setting up self-defense held bound thereby unless proven to be false.—Giesecke v. State, Tex., 142 S. W. 1179.

39. **Criminal Law**—Judicial Notice.—The Supreme Court will take judicial notice of the contents of the legislative journals.—Jackson v. State, Ark., 142 S. W. 1153.

40. **Criminal Trial**—Change of Venue.—The mere existence of widespread comment or of a widespread belief in the guilt of accused held not to prevent accused from obtaining a fair trial, and does not authorize a change of venue.—People v. Hyde, 133 N. Y. Supp. 306.

41. **Customs and Usages**—Contracts.—A person to a contract may be bound by a custom of the trade.—Eaton v. J. R. Crowe Coal & Mining Co., Mo., 142 S. W. 1107.

42. **Death**—Unexplained Absence.—Unexplained absence of a person from his home for seven years raises a presumption of death, subject to be rebutted by facts and circumstances or by a conflicting presumption.—Donovan v. Major, Ill., 97 N. E. 231.

43.——Pain and Suffering.—In an action by a widow as administratrix for death of her husband, no damages are recoverable for pain and suffering endured by the deceased.—Pittsburgh, C., C. & St. L. Ry. Co. v. Brown, Ind., 197 N. E. 145.

44.——Seven Years' Absence.—Trustees were not required to pay over to a beneficiary's administrator the amount due to him, where administration was granted so late, on unexplained absence for more than seven years, without being given indemnity.—Donovan v. Major, Ill., 97 N. E. 231.

45. **Deeds**—Attestation.—That a deed is attested by only one witness held not to affect its validity as between the parties and those having actual notice.—Cherry Lake Turpentine Co. v. Lanier Armstrong Co., Ga., 73 S. E. 610.

46.——Construction.—Where the granting

clause of a deed and the habendum are irreconcilable, the granting clause prevails.—Virginia Iron, Coal & Coke Co. v. Dye, Ky., 142 S. W. 1057.

47. **Dedication**—Withdrawal of Offer.—An offer to dedicate land by a statutory plat can only be withdrawn by vacation of the plat under the statute, but an offer to dedicate land by a common-law plat may be otherwise withdrawn before acceptance.—Kimball v. City of Chicago, Ill., 97 N. E. 257.

48. **Depositions**—Adverse Party.—A claim agent of a railway company held to stand for the company within the statute allowing a party to call the adverse party to testify.—State ex rel. Bressman v. Theisen, Mo., 142 S. W. 1088.

49. **Divorce**—Condonation.—A wife's putting up with mistreatment held not to show condonation, in an action for divorce.—Bliss v. Bliss, Mo., 142 S. W. 1081.

50. **Easements**—Alleyway.—Where owner of land reserved alleyway in part conveyed, conveyance of remainder giving alleyway as boundary, held to pass a right of common of easement to the second grantee.—Wimpey v. Smart, Ga. 73 S. E. 586.

51.——Reservation.—A reservation or exception of an easement need not contain words of inheritance, in order to reserve it to the grantor and his heirs.—Wilson v. Ford, 133 N. Y. Supp. 33.

52. **Embezzlement**—Larceny.—Servant, converting money intrusted to him to get it changed, held not guilty of simple larceny, but of larceny after trust.—Basley v. State, Ga., 73 S. E. 624.

53. **Eminent Domain**—Easement.—Individuals having an easement of access held not entitled to recover damages for a permanent interference therewith by an embankment built by a railroad in a street under an order of the public service commission.—O'Brien v. New York Cent. & H. R. R. Co., 133 N. Y. Supp. 322.

54. **Equity**—Prescription.—A legal title to land will not be disturbed after a long lapse of time; the death of witnesses and loss of evidence rendering it practically impossible to make a defense.—Gillette v. Plimpton, Ill., 97 N. E. 260.

55. **Evidence**—Admissibility.—Statements by the rector of a church held not admissible as against the church.—Kelly v. St. Michael's Roman Catholic Church in City of Brooklyn, 133 N. Y. Supp. 328.

56.——Consideration of Deed.—To show the real consideration of a deed expressing a nominal consideration, evidence de hors the deed is admissible.—King v. Union Trust Co., 133 N. Y. Supp. 18.

57.——Primary Evidence.—Rule requiring proof of search for original writing before offer of secondary evidence held not to apply, where the paper is in the custody of the adverse party, who admits it is lost.—Cochran v. Bank of Tuttle, Okla., 120 Pac. 652.

58. **Executors and Administrators**—Liability of Heir.—Where notes were executed by an incompetent, his estate was liable in an action by a holder with notice to the extent that it received the benefit of the proceeds of the note.—Sebree v. Crutchfield, Ky., 142 S. W. 1017.

59. **Food**—Constitutional Law.—The Legislature cannot constitutionally prohibit the sale of oleomargarine, except in imitation of some other substance, with intent to deceive.—People v. Guiton, 133 N. Y. Supp. 353.

60. **Fraudulent Conveyances**—Equity.—Persons who claim under a debtor who fraudulently conveyed property to defeat creditors can no more have relief in equity than the debtor could.—Hall v. Orme, Ky., 142 S. W. 1077.

61.——Presumptive Fraud.—A voluntary conveyance by an insolvent husband to his wife held conclusively fraudulent as to existing creditors.—Brady v. Irby, Ark., 142 S. W. 1124.

62. **Frauds, Statute of**—Broker's Authority.—Verbal authority to a broker to procure a purchaser for land did not authorize him to execute a written contract of sale which would bind his principal.—McLeod v. Morrison & Eshelman, Wash., 120 Pac. 528.

63. **Gaming**—Futures.—It is the public policy of the state, as evidenced by statutes, to condemn contracts known as "dealings in futures."—Ascher & Baxter v. Edward Moyse & Co., Miss., 57 So. 299.

64. **Highways**—Owner of Fee.—The owner of the fee over which a suburban highway is located, so long as he does not interfere with the public use, may use it as he sees fit.—Cleveland, C., C. & St. L. Ry. Co. v. Smith, Ind., 97 N. E. 164.

65. **Husband and Wife**—Contracts Between.—Since a married woman had the right to purchase land from her husband, the question of whether the contract was beneficial to her estate must be left to her judgment.—Washburn v. Gray, Ind., 97 N. E. 190.

66.——Tenancy by Entirety.—Judgment debtor's interest as tenant of the entirety may be sold on execution; the purchaser taking as tenant in common.—Bartkowaik v. Sampson, 133 N. Y. Supp. 401.

67. **Indians**—Reservation.—The rights of Indians to lands within the legal boundaries of a reservation cannot be affected by an incorrect survey and the patenting to others of the lands thereby excluded.—Northern Pac. Ry. Co. v. United States, C. C. A., 191 Fed. 947.

68. **Injunction**—Contempt.—The violation of an injunction is a constructive or civil, as distinguished from a criminal, contempt, and so a proceeding for its puishment is ancillary to the cause in which the injunction was issued.—Fielder v. Bambrick Bros. Const. Co., Mo., 142 S. W. 1111.

69.——Estoppel.—Property owner permitting railroad company to expend $50,000 on faith of borough ordinance authorizing vacation of street crossing held barred by laches from relief by injunction.—Condron v. Pennsylvania R. Co., Pa., 82 Atl. 64.

70. **Insurance**—Husband and Wife.—The interest of a wife in the husband's life insurance policy is her separate estate.—Sam Levy & Co., v. Davis, Tenn., 142 S. W. 1118.

71.——Insurable Interest.—Assigning insurance to one who has no insurable interest held proper, if not done to cover up a wager policy.

—Volunteer State Life Ins. Co. v. Buchannan, Ga., 73 S. E. 602.

72. **Intoxicating Liquors**—Keeping Liquors.—It is a violation of law for a person to keep on hand intoxicating liquors at his place of business, though it is closed.—Toles v. State, Ga., 73 S. E. 597.

73. **Judgment**—Opening Default.—Unless default is caused by gross laches of defendant's attorney, defendant, where his answer presents a meritorious defense, should be permitted to file it.—St. Louis & S. F. R. Co. v. Zumwalt, Okla., 120 Pac. 640.

74. **Landlord and Tenant**—Injunction.—A lessor leasing premises for a saloon, on condition that the lessee shall buy beer exclusively from the lessor, held not entitled to restrain the lessee from violating the lease, but his remedy is at law.—Voigt Brewery Co. v. Holtz, Mich., 134 N. W. 19.

75.——Spaces for Common Use.—Where a landlord rents different parts of a building to different tenants, reserving the elevators, halls and stairways, he is liable for injuries to a tenant's servant caused by a failure to keep the reserved spaces in proper condition.—Mueller v. Phelps, Ill., 97 N. E. 228.

76. **Life Estates**—Joint Conveyance.—A life tenant and a remainderman may by their joint conveyance grant a fee.—Wolford v. Smith, Ky., 142 S. W. 1055.

77. **Limitation of Actions**—Estoppel.—A maker of a note, who obtains, at his instance, an extension of time of payment, held estopped from relying on the defense of limitations.—Quanchi v. Ben Lomond Wine Co., Cal., 120 Pac. 427.

78.——Starting Point.—The building of a drainage canal held not to start running of the statute of limitations against a right of action for damage from recurrent and intermittent floods.—Jones v. Sanitary Dist. of Chicago, Ill., 97 N. E. 210.

79. **Malicious Prosecution**—Procedure.—Suit for malicious prosecution of civil proceedings is governed by the same general principles applicable to suits based on criminal proceedings.—Sawyer v. Shick, Okla., 120 Pac. 581.

80. **Master and Servant**—Duty of Master.—The measure of a master's duty is not that of an insurer.—Impellizzieri v. Cranford, 133 N. Y. Supp. 336.

81.——Duty to Instruct.—A section foreman in the employ of a railroad company has a right to expect adequate instructions.—Bailey v. Louisiana & Northwest R. Co., La., 57 So. 325.

82. **Mines and Minerals**—Discovery.—Discovery is the source of a miner's title, and is an essential requisite to a valid location, and must precede the location.—Garibaldi v. Grillo, Cal., 120 Pac. 425.

83.——Land Department.—The decision of the Land Department holding that a local land office had no jurisdiction to receive an application for a patent is binding in an action in which the validty of the patent is involved.—McKnight v. El Paso Brick Co., New Mex., 120 Pac. 694.

84.——Mining License.—A license to mine coal does not convey or grant to the licensee any interest in the coal until the licensee has mined it.—Caledonian Coal Co. v. Rocky Cliff Coal Mining Co., N. Mex., 120 Pac. 715.

85. **Monopolies**—Common Law Indictment.—Insurance held not an article of merchandise or manufacture, or one of the necessaries of life within the laws against engrossing.—Harris v. Commonwealth, Va., 73 S. E. 561.

86. **Municipal Corporations**—Ordinance.—Unless there is such repugnancy between a statute and an ordinance as to render the latter void, the courts will not declare the ordinance void.—Edwards v. City of Kirkwood, Mo., 142 S. W. 1109.

87. **Negligence**—Avoiding Consequences.—Where petition clearly discloses that plaintiff could have avoided consequences of defendant's negligence, and evidence shows such fact, a nonsuit is proper.—Ball v. Walsh, Ga., 73 S. E. 585.

88.——Burden of Proof.—To establish a cause of action for negligence, plaintiff must show a duty from defendant to him, a failure of defendant to perform, and a resulting injury.—Merica v. Ft. Wayne & W. V. Traction Co., Ind., 97 N. E. 192.

89.——Highway.—Where the owner of land makes excavations so close to a highway that those proceeding on it are liable to fall in, he is liable to them.—Carroll v. State, 133 N. Y. Supp. 274.

90. **Nuisance**—Legislative Grant.—A legislative grant held not a protection from liability for injury not a necessary and probable result of the building of a drainage canal.—Jones v. Sanitary Dist. of Chicago, Ill., 97 N. E. 210.

91. **Partition**—Tenancy by Entirety.—A purchaser at execution sale of a debtor's interest as tenant of the entirety with his wife cannot maintain partition.—Bartkowaik v. Sampson, 133 N. Y. Supp. 401.

92. **Principal and Agent**—Ratification.—A new consideration was not necessary to support a ratification of an agent's unauthorized contract for the sale of land.—McLeod v. Morrison & Eshelman, Wash., 120 Pac. 528.

93.——Scope of Authority.—An agent having power to remove trespassers held not authorized to use firearms to do it.—Strader's Adm'rs v. President and Directors of Lexington Hydraulic & Mfg. Co., Ky., 142 S. W. 1073.

94. **Principal and Surety**—Discharge of Surety.—The slightest fraud by the creditor inducing the sureties to make the contract annuls the contract.—Putney v. Schmidt, N. Mex., 120 Pac. 720.

95. **Railroads**—Burden of Proof.—The contributory negligence of a traveler struck by a train at a crossing is a defense of which the burden of proof is on the railroad company.—Lake Erie & W. R. Co. v. Moore, Ind., 97 N. E. 203.

96.——Crossing Accident.—In absence of contrary evidence, it is presumed that a decedent who was killed at a railroad highway crossing stopped, looked, and listened.—De Padilla v. Atchison, T. & S. F. Ry. Co., N. Mex., 120 Pac. 724.

97.——Warning.—A railroad company must give a traveler on its track reasonable warning of the approach of a train.—Smith's Adm'r

v. Cincinnati, N. O. & T. P. Ry. Co., Ky., 142 S. W. 1047.

98. **Receivers**—Sales.—Where a receiver did not purchase at his own sale, he cannot be charged with the difference between the purchase price and the price the property should have brought.—In re Receivership of Bonita Mercantile Co., La., 57 So. 332.

99. **Reformation of Instruments**—Mutual Mistake.—Equity has jurisdiction to correct a mutual mistake in the settlement of partnership accounts.—Howard v. Tettelbaum, Ore., 120 Pac. 373.

100. **Religious Societies**—Contract.—No particular form of evidence is required to prove authority to execute a contract for a religious corporation.—Kelly v. St. Michael's Roman Catholic Church in City of Brooklyn, 133 N. Y. Supp. 328.

101. **Remainders**—Expectancy.—Any interest in remainder, whether absolutely vested or vested subject to be divested or contingent, is an "expectancy."—Robinson v. New York Life Ins. & Trust Co., 133 N. Y. Supp. 257.

102. **Replevin**—Demand and Refusal.—Where, in replevin, defendant contests the action, the writ is a sufficient demand, and defending the suit a refusal.—Maddox v. Dowdy, Okla., 120 Pac. 651.

103. **Sales**—Conditional Sale.—A vendor may deliver the chattel, on condition that title shall not pass until purchase price is paid, and the subsequent purchaser can acquire no title against the original vendor.—Starnes v. Boyd, Ark., 142 S. W. 1143.

104.——Executory Contract.—A contract to sell a crop of olives, not yet in a state to be delivered, and which are to be picked and delivered by the seller at the shipping point, held not to immediately pass the title.—Kennedy v. Grogan, Cal., 120 Pac. 433.

105.——Recording.—Though failure to record in time may subject holder of bill of sale to risk of loss by superior diligence of holder of junior lien, if he has obtained title before creation of lien it will not be defeated by mere failure to record.—Balchin v. Jones, Ga., 73 S. E. 613.

106.——Retention of Title.—Where goods are sold for cash and a check for the price is dishonored, the vendor may recover the value either from the vendee or from any party who has no greater equities.—First Nat. Bank v. Griffin & Griffin, Okla., 120 Pac. 595.

107. **Taxation**—Void Sale.—A tax deed showing on its face that the land was offered for sale for taxes on one day only, and struck off to the county on that day, is void on its face.—Lambert v. Murray, Colo., 120 Pac. 415.

108. **Tenancy in Common**—Tax Sales.—Cotenant acquiring title from tax purchaser within time for redemption held to acquire no greater interest than he had before, except a claim for reimbursement.—Gulf Refining Co. of Louisiana v. Jeems Bayou Hunting & Fishing Club, La., 57 So. 322.

109. **Trade-Marks and Trade-Names**—Imitation.—The imitation of an unpatented article of a competitor in material, form, and appearance, except for a distinctive name plate, held not to constitute unfair competition when it was done for utilitarian reasons, and no case of deception of purchasers was shown.—Pope Automatic Merchandising Co. v. McCrum-Howell Co., C. C. A., 191 Fed. 979.

110. **Trover and Conversion**—Right of Action.—Person having right of possession to property to secure debt held entitled to recover in trover of person for whose benefit the surplus of recovery would be held only the amount of the debt.—Atlantic Coast Line R. Co. v. W. W. Gordon & Co., Ga., 73 S. E. 594.

111. **Trusts**—Legatee.—A loan made to a legatee by a testamentary trustee from the trust funds may be retained by the executor from the amount payable to the legatee or his assignees.—Jenkinson v. New York Finance Co., N. J., 82 Atl. 36.

112. **Use and Occupation**—Implied Contract.—The law implies a contract to pay rent from the mere fact of occupation, unless the occupancy be such as to negative the existence of a tenancy.—United States v. Whipple Hardware Co., C. C. A., 191 Fed. 945.

113. **Vendor and Purchaser**—Description of Property.—A deed, to constitute notice, must so reasonably describe the lands as to enable one who inspects the record for titular purposes to know what precise land is included.—Hammonds v. Eads, Ky., 142 S. W. 379.

114.——Equitable Interest.—In absence of statute, the maxim, "The first in order of time is the strongest in law," applies to the successive assignments of equitable interests in land as well as to the transfer of legal interests.—Jenkinson v. New York Finance Co., N. J., 82 Atl. 36.

115.——Partners.—A partnership association held estopped from recovering back payments made by it under a contract to purchase land, though under the statute the contract was not enforceable against it, because executed by a single agent.—Geel v. Goulden, Mich., 134 N. W. 484.

116. **Waters and Water Courses**—Overflow.—Right to flood another's land held an easement, acquisition of which by prescription requires continuous enjoyment for the period of limitations governing actions to recover land.—Shearer v. Hutterische Bruder Gemeinde, S. D., 134 N. W. 63.

117.——Railroad.—Railroad company after acquiring and paying for its right of way held to have the right to repel surface waters flowing thereon from adjoining lands.—Cleveland, C., C. & St. L. Ry. Co. v. Smith, Ind., 97 N. E. 164.

118. **Wills**—Collateral Attack.—The probate of a will cannot be collaterally attacked.—Slick v. Brooks, Ill., 97 N. E. 250.

119.——Election.—Where a husband elected not to take under the will of his wife, he became entitled, there being no children of the marriage, to one-half of the real and personal estate after the payment of debts.—Franklin v. Hastings, Ill., 97 N. E. 265.

120.——Holographic Will.—Holographic will of a nonresident without witnesses in the state properly executed according to the laws of his domicile held valid under Decedent Estate Law, § 23, as to personal property in the state.—In re Seixas' Will, 133 N. Y. Supp. 406.

121.——Severability.—Where an invalid provision of a will is not severable from the remainder, the whole will must be held invalid.—Hacker v. Hacker, 133 N. Y. Supp. 266.

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CONTENTS.

EDITORIAL.

Extending "Engrossing" at Common Law To Insurance As An "Article of Prime Necessity" 259

NOTES OF IMPORTANT DECISIONS.

Treaties—Exclusive Right of Administration of Estates by Consuls Under Highly Favored Nation Clauses 260

Corporations—Stockholder Liability Annexed to a Corporation's Carrying on Business in Another State 261

LEADING ARTICLES.

Deodands. By John F. Geeting 262
Boycotts. By Howard C. Joyce 263
Reform of Civil Procedure—A World Movement. By Axel Teisen 267

LEADING CASE.

Maturity of Note Payable on Demand With Reference to Bona Fide Purchasers, Statute of Limitations and Notice to Indorsers. Kerby v. Wade, et al., Supreme Court of Arkansas, January 1, 1912, (with note) 269

BOOKS RECEIVED 271

BOOK REVIEWS.

Christ's Christianity 271
HUMOR OF THE LAW 271
WEEKLY DIGEST OF CURRENT OPINIONS. 272